details of the oral agreement in preference to the evidence of the defendant-appellant and his one witness save that he said:—

> I disbelieve the evidence of the defendant and his one witness that the plaintiff had advised the defendant that the estimated costs of these alterations and additions would be about $15,000. The witness for the defendant gave evidence that in his opinion the cost would be about $30,000. The tenders, when opened, were found to range from $26,000 to $42,000, and I cannot believe that the defendant, well acquainted with the building trade as he is, could not have known that those alterations and additions could never have been executed for the sum of $15,000.

The plaintiff-respondent stated he never gave an estimate in respect of the renovations, although he admitted doing so in respect of his claims under paragraphs (a) and (c). He admitted making a charge in respect of an estimate for the renovations and then had to admit he had made a charge for something he did not do. I think he told the defendant-appellant that the cost of renovating the whole building would be approximately $15,000. The defendant-appellant may have been well acquainted with the building trade but in the last quarter of 1945 times were exceptional, particularly as appears from the evidence of the plaintiff-respondent himself building materials were not then on sale in the shops. Furthermore, the defendant-appellant first mentioned this sum in a statement dated 2nd of December, 1946, although the limit of this amount was not pleaded by him until he filed his further amended defence.

The agreement as alleged by the plaintiff-respondent was not corroborated by any document. The receipt for $100 dated February 1, 1946 does not seem to me to be conclusive either way. It is to be noted on behalf of the defendant-appellant that it does not contain any limiting words such as "on account" and on behalf of the plaintiff-respondent that it contains a number of question marks in the body of the receipt indicating that the plaintiff-respondent would appear to have been dissatisfied with the amount received.

The diary produced by the plaintiff-respondent could hardly be called a professional diary and it is of no value whatsoever as independent corroboration of the evidence of the person who produced it.

Having rejected the terms of the express agreement as alleged by the plaintiff-respondent on the grounds that it appears that it was in the nature of an after thought and on the grounds that the plaintiff-respondent said that he had forgotten about the agreement to pay 10% when he made out his bill although he tried to make the Court believe from his diary that he had been aware for some months that the defendant-appellant was trying to manoeuvre him out of his 10% one is driven inevitably to the conclusion that the defendant-appellant and his witness were speaking the truth as to the details of the express agreement.

I would therefore allow this appeal and give judgment for the defendant-appellant with costs here and in the Court below.

Appeal allowed.

TOH SENG CHOR & ORS. v. PUBLIC PROSECUTOR

[A. Cr. J. (Willan C.J.) August 20, 1948]

[K. L. — Magistrate Criminal Appeal No. 32 of 1948]

Criminal Procedure Code (Cap. 6), s. 73 — Bond to keep the peace — Enquiry into the truth of information necessary — Voluntarily causing hurt — Penal Code, s. 323.

In this case the four appellants were charged with voluntarily causing hurt, and the first three were convicted, sentenced to varying terms of imprisonment, and, in addition, bound over to keep the peace. The fourth appellant was discharged but immediately on his discharge the Magistrate called upon him to show cause why he should not execute a bond to keep the peace. The Magistrate did not hear any evidence but ordered the accused to execute a bond to keep the peace as "he is suspected by the complainant of being concerned in the assault."

Held: under s. 73 of the Criminal Procedure Code the Magistrate should have enquired into the truth of the information on which he acted before making the order to execute the bond and, as he had failed to do so, the appeal in this case must be allowed.

MAGISTRATE'S CRIMINAL APPEAL.

P. P. Nair for 1st, 2nd and 3rd appellants.

M. N. Cumarasami for the 4th appellant.

W. Buhagiar (D. P. P.) for Public Prosecutor.

Willan C.J.: — In this case the four appellants were charged under section 323 of the Penal Code with voluntarily causing hurt to the complainant, another Chinese. The first three appellants were convicted, sentenced to varying terms of imprisonment and, in addition, bound over to keep the peace.

There is ample evidence on the record to support their convictions, and there are no grounds for interfering with the sentence. Accordingly the appeals of the first three appellants are dismissed.

With regard to the 4th appellant, who is the father of the 2nd appellant and the employer of the 1st and 3rd appellants, there is not a tittle of evidence on the record to justify his ever having been charged with voluntarily causing hurt to the complainant. He was discharged at the end of the trial. But, immediately after his discharge the learned Magistrate called upon him to show cause why he should not execute a bond to keep the peace. The record, on that aspect of the case, is as follows :—

I call on Defendant No. 4 to show cause why he should not execute a bond to keep the peace for a period of 6 months. Defendant's son has been convicted. Two of his employees have been convicted and he himself is suspected by the complainant of being concerned in the assault. Defendant No. 4 says he has nothing to do with the case and has nothing more to say. I therefore order Defendant No. 4, Lee Chye Choo, to execute a bond to keep the peace in two sureties of $5,000 each for a period of six months.

The learned Magistrate has failed to comply with the provisions of section 73 of the Criminal Procedure Code that he should enquire into the truth of the information on which he acted. The record discloses that the Magistrate acted against the 4th appellant on mere suspicion. That is not enough.

In view of the learned Magistrate having ignored the mandatory provisions of section 73 of the Criminal Procedure Code the appeal of the 4th appellant must be allowed. If the 4th appellant has executed any bond, it must be vacated.

Order accordingly.

LEONG WENG MAY v. LIM CHOON KEE

[O. C. J. (Gordon Smith Ag. C.J.) August 25, 1948]

[Singapore — Suit No. 529 of 1947]

Practice — R.S.C., O. 16, r. 25(2) & 26 — Costs in In Forma Pauperis cases — Special circumstances.

In this case judgment was given for the plaintiff who claimed *in forma pauperis*. It was argued that the Defendant was well able to pay the costs and therefore full costs should be awarded against him.

Held: (1) the ability of an unsuccessful defendant to pay the plaintiff's advocate's costs is not a special circumstance under Order 16, r. 25(2); (2) there were no special circumstances in this case to enable the Court to exercise the discretion contained in r. 26.

Case referred to :—

(1) *Jackson and Jackson v. Barwell* (1936) 2 All E.R. 1588.

CIVIL SUIT IN FORMA PAUPERIS.

R. C. H. Lim for the plaintiff.

N. N. Leicester for the defendant.

Gordon Smith Ag. C.J.: —At the conclusion of the hearing of this case I gave judgment for the plaintiff for the amount claimed ($697.31) and then there arose the question of costs, the plaintiff being a pauper and having been represented by Mr. Richard Lim. It was alleged that the defendant was well able to pay the costs, including profit costs of the pauper-plaintiff's advocate, and I reserved this question, as I wanted to refer to the cases quoted under Order 16 rule 25(2). I have now had an opportunity of doing so. It is clear from *Jackson and Jackson v. Barwell*[1] that the ability of an unsuccessful defendant to pay the plaintiff's advocate's cost was not a special circumstance as described in the Rule.

I have referred to all the local cases quoted but can find nothing helpful in any of them as to what constitutes special circumstances. In fact I cannot see what special circumstances there were and the case was certainly not prolonged by the conduct of the defence — either at the hearing or by any previous unnecessary applications.

I cannot, therefore, exercise the discretion contained in this rule but I can see nothing in Rule 26 which precludes me from making an order thereunder. This I am pleased to do for a small amount, more by way of a token of appreciation by the plaintiff out of the money recovered, for the excellent services rendered by his advocate.

The order will, therefore, be that the defendant pay the out of pocket expenses and disbursements of the plaintiff and his advocate and that the advocate receive out of any money received by the plaintiff in the cause one-seventh of any such amount. If the full amount is recovered, such amount will be approximately $100.00, and I think that such amount is some recompense for the time and trouble taken by Mr. Lim on the plaintiff's behalf.

Order accordingly.